A landowner is entitled to have the market value of his property determined by reference to the highest and best use for which it is available. ***United States v. 91.90 Acres of Land***, 586 F.2d 79 (8th Cir. 1978), cert. denied, 441 U.S. 944, 99 S.Ct. 2162, 60 L.Ed.2d 1045 (1979). Ordinarily the highest and best use for property condemned is the use to which it is subjected at the time of the taking. However, the courts recognize that there may be circumstances that require a finding that another highest and best use exists. ***United States v. Buhler***, 305 F.2d 319 (5th Cir. 1962).

Due process, involving notice and the opportunity to be heard, is guaranteed by both the Constitutions of the United States and the State of Oklahoma. Oklahoma Courts have defined the minimum requirements for due process in many cases. Essentially, the right demands:

> an orderly proceeding adapted to the nature of the case, before a tribunal having jurisdiction, which proceeds upon notice, with an opportunity to be heard, with full power to grant relief.

State ex rel. Oklahoma Employment Sec. Com'n v. Morrow, 877 P.2d 1182 (Okla.App. 1994), *quoting* ***Kingwood Oil Co. v. Corporation Commission***, 396 P.2d 1008 (Okla.1964) (syllabus 2).

Petitioner presented evidence to the trial court that the highest and best use of his property was as a sand mine. Evidence was presented to the trial court; however the trial court completely refused to even consider the issue. Consequently, the valuation of the property was millions less

than it should have been, allowing confirmation of the for substantially less than the property was worth.

As was true with the discussion above with respect to the consideration of the federal court decision, the failure of the Oklahoma courts to properly apply its own requirements prior to the sale of property by a sheriff is absolutely a denial of due process that may not be countenanced by this Honorable Court. Oklahoma courts failed to take the appropriate action to protect Petitioner's important constitutional rights, thus, this Court must exercise its discretion and act to make Oklahoma accountable for its failure to protect the rights of its citizens.

CONCLUSION

This case presents issues of significant importance. The decision of the Oklahoma Court of Civil Appeals violates principles of law from this Court. The Court should exercise its discretion and grant Petitioner's request for review by this Court.

Respectfully submitted,

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